

**CITY OF ALAMOGORDO, NEW MEXICO
CITY COMMISSION REGULAR MEETING MINUTES
MUNICIPAL BUILDING, 1376 E. NINTH STREET
7:30 P.M., COMMISSION CHAMBERS
JUNE 22, 2004**

**MAYOR DON CARROLL
MAYOR PRO-TEM RON GRIGGS
COMMISSIONER INEZ MONCADA
COMMISSIONER DON COOPER
COMMISSIONER ED COLE**

**COMMISSIONER JOHN ROBERTSON
COMMISSIONER MARION LEDFORD
CITY MANAGER PAT McCOURT
CITY ATTORNEY KEN McDANIEL
CITY CLERK ANGIE RAHN-BROYLES**

Call Meeting to Order, Roll Call, Invocation, and Pledge of Allegiance.

The Meeting was called to order at 7:30 p.m. The Invocation was given by Rev. Richard Hicks, the Posting of the Colors was by the Alamogordo High School Air Force Junior ROTC, and the Pledge of Allegiance was led by Boy Scout Troop 127.

PRESENTATIONS:

1. Presentation by the City Commission to the City Manager and City Staff.

Commissioner Cole said last Wednesday he'd had the opportunity to participate in Leadership Otero, in which he was a student. He was very pleased with the way City staff had presented themselves that day to those eighteen members of Leadership Otero. He complimented Ed Carr and his staff from OCEDC on the program. This class met one full day each month for ten months. It was a full day and was exhausting. They went to different government entities throughout those months. Getting into the class was a challenge in itself, and each member paid a tuition fee of \$300. Last Wednesday, under the direction of the City Manager, the City employees did an outstanding job. Two different members of his class had come to him and complimented the City staff. He wanted to pass that along to the staff. He wished to present an appreciation certificate to the City Manager, and wished to name the employees involved: Benny Covarrubia from Parks and Recreation; Mark Graham from MIS; Betsy Keller from Personnel; Ken McDaniel from Legal; Brian McGuire from Community Development; Matt McNeile from Community Services; Jose Miramontes from Public Works; LeeAnn Nichols from Finance; Cameron Stern from the City Clerks Office; Cheryl Town from Public Housing; and Sam Trujillo from DPS.

Mr. McCourt thanked Commissioner Cole for the opportunity to show off the City. He felt we have a great staff, was proud of our work, was proud of serving the community, and he was proud to be a member of the staff. Mayor Pro-Tem Griggs recommended the class as it gave a real working knowledge of the community, and would be a real benefit to anyone who chose to attend.

CALL OF THE CONSENT CALENDAR:

2. Minutes of Regular Meeting of June 8, 2004.

Recommendation: Approve the minutes.

4. Agreement with the Alamogordo Chamber of Commerce for Promotional Services.

Recommendation: Approve the Agreement.

5. Renewal of Lease Agreement with Otero County for property on LaVelle Road used as a transfer station for solid waste.

Recommendation: Approve the Lease Renewal.

8. Ordinance No. 1185 amending Article 2-13 of the Code of Ordinances concerning City Purchasing and Construction Project Administration.

Recommendation: Approve the Ordinance for final adoption.

9. Ordinance No. 1204 amending Sections 28-03-035 and 28-03-037 and enacting Section 29-03-038 of the Code of Ordinances regarding water use.

Recommendation: Approve the Ordinance for final adoption.

11. Resolution No. 2004-22 calling the August 31, 2004 Special Election.

Recommendation: Approve the Resolution.

14. Resolution No. 2004-31 requesting that the Department of Finance & Administration, State of NM, approve revised budget figures for certain line items in the City's budget for FY 2003-2004.

Recommendation: Approve the Resolution.

17. Grant of Easement and Right-of-way to Texas-New Mexico Power Company for the Tularosa Basin National Desalination Research Facility.

Recommendation: Approve granting the Easement and Right-of-way.

19. Statement regarding the Executive Session of June 8, 2004.

Recommendation: Approve the statement.

Commissioner Cooper moved to accept items 2, 4, 5, 8, 9, 11, 14, 17, and 19. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0.

PLANNING ITEMS:

3. Consideration of the final plat of ALAMO CANYON ESTATES SUBDIVISION for thirty-four (34) lots located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, for Nelson & Nelson Jr., Partnership [Case S-04-0819(A), Alamo Canyon Road].

Recommendation: Approve the final plat, located outside the City of Alamogordo, but within its extra-territorial planning and platting jurisdiction, with variances on the construction and installation of alleys, on the installation of utilities (water and sewer), on the construction of streets to City standards (dedication, curb, gutter, sidewalk, and paving), on the length of time allowed for filing the final plat (requesting 90 days), and on the dedication of public land; with a Waiver of Protest Agreement and with the required plat corrections. [Tabled at the meeting of April 27, 2004]

Mr. Klad Zimmerle, Alamotero Land Survey, P.C., said this was a 34-lot subdivision in Alamo Canyon. They'd been through State review on this and were going before the County Commission next week. They'd received approval from both the City Planning and Zoning Commission, as well as County Planning.

Mayor Carroll said the Commission had received a letter from Westsource Realty expressing some concern over the septic tanks that were proposed for the subdivision. His question was whether this was going to be 42 individual wells, or was it going to be a community water system that was established to address the water issue for the subdivision? Mr. Zimmerle said it was 34 lots, not 42. What they had done through the State Engineer was to receive approval for both single and shared wells. The potential was there for one well for four lots if the owner so desired. They had well maintenance agreements that were in place in the disclosure for that, and it had also been approved for single wells, one per lot, three acre feet of water. Mayor Carroll said everyone was aware of the water situation throughout the state, and maybe it was his misunderstanding that at some point the State Engineer was going to start requiring these multiple unit subdivisions to put in community water systems rather than continuing to allow individual or shared wells. Mr. Zimmerle said that may be somewhere in the future, but right now the State Engineer had given a positive opinion to proceed as they had. The potential was for shared wells, which would be limited to three acre feet for four families, or individual wells with three acre feet.

Commissioner Cole asked if they were going to be metered? Mr. Zimmerle said the individual wells would not be metered; it was not required in the Basin at this time. If it was a shared well, it would be metered and every family's usage on that well would be metered. Commissioner Cole thought that three acre feet had been reduced by the State to 1.5 acre feet. Mr. Zimmerle said no. There were some critical management areas in Otero County that fell in the Laborcita area and the High Rolls area; that area had been reduced to half an acre foot per new domestic well. The existing wells were still allowed three acre feet anywhere in the Basin.

(Note: Inaudible tape)

Mr. Zimmerle said where normally you would pump a septic system in two to four years; this one was five to six. However, the maintenance on it was quite a bit more and the initial cost was doubled. The Environment Department was very well aware of these and they may say this had to be put in, and they had it in the disclosure. But they needed to go to the Environment Department first and go with their recommendations. Mayor Carroll said since this was a County subdivision, he felt it was incumbent upon the County Commission to figure out how to address these concerns. The City Commission's was more of a concurrent approval. In the past we had not gotten into a position to tell the County how they needed to go about protecting County residents.

Mayor Pro-Tem Griggs said during the course of a building inspection on a situation like this, did the City inspect or look to see if they had approval for their well or septic when we were doing that? Mr. Zimmerle said he would think so. Mayor Pro-Tem Griggs felt that was something that in this subdivision we needed to be more concerned with.

Commissioner Robertson said regarding the rock issue, if all these people who kept telling him what was up there were right, what would they go back and do to make it right? They hadn't core drilled to find out what was on the property. If these people went in and put all the septic tanks in there and were running some wells, what would the subdividers do about making it right to where they could get water and to make the whole thing right? Mr. Zimmerle said there were

no guarantees in New Mexico for water. That was a given. There was not necessarily water under anything. In the disclosure they had provided recent well logs from immediately adjacent properties. The depth to water and the depth to clay were all very similar. It showed that there was consistency in the soils in that area.

Mr. Michael Shyne, Westsource, said the remarkable thing was that there was a whole bunch of citizens who all lived in the same community with different opinions but who were all able to get together in a room and discuss a topic they might agree or disagree on to try to come to a conclusion that would work for everybody. City Commission meetings were great examples of cooperation, so everyone came at a great time. He'd lived on South Canyon Road for 25 years. When he drilled his well to a water level of 465 feet—he'd drilled it to 495 feet, Tom Braziel had stated that was 495 feet of solid gravel. He wanted to explain a little bit about what caused him to be concerned with this subdivision. First he wanted to state that he totally supported the right of other people who may own property next to him to be able to use their property. This was not a "By God, I'm there first and you can't come afterwards" issue at all. This was an issue of "Please use your property upstream from mine in a way that it does not damage mine and my neighbor's". Traditional septic tanks put out water that had been treated to some extent within that septic tank so long as people maintained the bacteria level. If they ignored that, after awhile it was putting out pretty stout effluent. Percolation wasn't the problem in their area. The gravel content caused water to go right through the ground. So they weren't going to have a situation where septic tanks wouldn't percolate; quite the contrary. They would percolate so good that whatever was coming out of that septic tank was going to go down into the water table. This area down around Alamo Canyon was completely different from where he was. If they drilled a well and went down about 50 feet, they would hit a layer of clay that would be thick and consistent enough for miles to prevent septic effluent from going through that clay and getting to a water table of maybe 250 feet. Most places in the County where they had one acre lots that had wells and septic tanks, didn't pose the problem that existed in the escarpment at the mouth of Alamo Canyon. But that whole hill up there at the base of Alamo Canyon had washed out of Alamo Canyon. Some dirt came, but mostly gravel, rock, sand, and boulders. That was the reason why it was so porous and that was the reason this particular one was of concern different from other subdivisions in other areas. His concern was when you had 34 septic tanks on a 40-acre tract; you had a situation where a lot of potential contamination could go into the water table and contaminate the wells downstream. What direction was downstream from this subdivision? We really didn't know. It definitely wasn't east, southeast, or northeast because that was uphill; but it could be north, southwest, west, or northwest. When Albertson's went in, they had to do an expensive underground evaluation because of some contamination of fuel tanks there that they had to remediate. If that area at 49 feet was the upper water level and the water flow was in a southwesterly direction—generally down here as you got away from the mountains into these same consistent soils, that water generally flowed to the southwest. However, up there we didn't know. Knowing what direction the water flowed, it was then possible to figure out what wells were potentially targeted by that effluent from these traditional septic tanks that were not necessarily monitored and maintained every year properly. So his concern was based on the fact that we had a unique soil that didn't exist here.

Mr. Shyne said his second concern was density. If the density didn't exist to that level, then the risk would be much less. Even though one acre with a well and a septic tank was legal in New Mexico, when they put 34 of them together it was a lot. In our area to the south and west of this property, 440 acres of land had a common restrictive covenant on it that called for a minimum home site of 2 ½ acres. So from our perspective obviously we had to maintain that we could live with a 2 ½ acre home site, but a one acre home site created a problem. If they were going to approve a subdivision with a one acre density, he would ask that they replace a requirement on here that the developer put an irrevocable deed restriction on these lots that required an

anaerobic septic system that put out much, much cleaner water, and also that the deed restriction required the property owner to maintain an annual service contract so that way that system was being kept up and the water coming out of it would not be contaminating wells downstream. This was really important. He knew some of the City Commissioners felt it was really not the City's responsibility, but was the County's. If the City said it had authority in the extraterritorial, then they had responsibility. With authority went responsibility. If the City approved a subdivision that they knew may have the potential due to the unique circumstances of the soil to contaminate wells downstream from that subdivision, and if they knew of a solution that was economically reasonable that could be implemented and they chose not to, then they stood liable along with the subdivider and along with the County. He asked them to please either require a lower density, 2 ½ acre minimum, or require an anaerobic septic tank system required by deed restriction, or don't approve this now and table it until the County makes a ruling.

Mayor Carroll said there was a reason for the separation of the various governmental entities. Our obligation was to protect the citizens who lived within the City limits of Alamogordo. There was a reason why people chose to live in the County—because they wanted the freedom to not hook onto City provided utilities. They wanted the freedom to have their individual wells and their individual septic tanks. He felt the rationale for our extraterritorial zoning authority was to make sure at some point if this were to be annexed into the City, that it would meet certain City standards. If this were a City subdivision, it would not be approved without water or sewer. The people who owned this property had made a decision, whether it was the City's inability to provide it or whether they were not interested in taking advantage of the City utilities, to live outside the City of Alamogordo. So he didn't see that it was the City's responsibility to step in and do what the County may need to do to protect the interest of other County residents. If this was an issue, then he felt the County Commission was the one that needed to be apprised of it and needed to address it, and for us not to attempt to usurp the responsibility or the authority of the County Commission in setting requirements on a County subdivision.

Mr. Shyne said he had met with Brian Nelson on Monday and explained his concern and asked if he could require these septic tank systems as a requirement, and Mr. Nelson said that he would choose not to do that. He understood what Mayor Carroll was saying, and if that was the case, then he would ask the Commission to table this and make the decision. But if the City made the decision first, they were either consenting or they were objecting, and it didn't matter whether this was in the extraterritorial zoning or not. Most of them out there didn't drill a well so they could avoid paying the cost of a City water tap because those wells cost \$10,000. Mayor Carroll said there were a lot of reasons that people chose not to be in the City. Mr. Shyne asked the Commission to really be conscientious here and either table it or approve it with a change because there was a real potential that was unique to that area but which did not exist here.

Commissioner Ledford said regarding the difference in size between the gravel and rock, was Mr. Shyne saying something different than what Mr. Zimmerle said? Hadn't Mr. Zimmerle said that we had this problem? Second, would not the Environmental Department assess that problem once they came in and inspected? Mr. Shyne said the Environmental Department would make sure that the ground could percolate; if it couldn't, then there was a problem. It would percolate real well. Also, they would see there was a well and septic tank, but would say that it was a full acre so it met State requirement. As long as the septic tank was of an adequate size and there was adequate separation, they were not going to get into the evaluation of the soil underneath, they weren't going to get into it as long as it met the percolation requirement, which it really did. Mr. Zimmerle had pointed out that the Arone's well log showed one actual ten foot thick clay level, but that might not be 50 feet away because this

was primarily gravel. Because of that, the water in these septic tanks was going to flow on top of that clay until it found a way through, and then it was going to go through. Down here there was consistent clay a long ways in all directions, but up there was sparse clay and that was the worry. It was better to avoid the potential of contaminating people's wells. Commissioner Ledford asked if he was saying he knew that was the case, or that it could be the case and so the City needed to find out if it was the case? Mr. Shyne said Tom Braziel had told him there was 495 feet of gravel where he drilled his well. His property shared a corner with the subdivision, and he was southwest downstream. So right there was an example which was within the next 40 acres which was solid gravel to the bottom.

Commissioner Ledford said they'd talked about responsibility of authority, and Commissioner Robertson had talked about liability. What was our liability? He didn't see where letting the County decide changed our liability. If they went first and we came back and did something second, what was the difference? Was the way our extra-territorial rules worked meaning that we would have liability? Mayor Carroll said whether or not we had a liability, 37 cents could put you in a position where you had to argue whether or not you did or didn't. As he understood it, the concurrent jurisdiction was more for planning purposes than for enforcement of State Statutes or any of the rules and regulations having to do with County subdivisions. As a part of our approval of this, the City would require, and we had in here a Waiver of Protest. It stated that if and when that particular piece of property would become part of the City and if we made a determination that wells and septic tanks were not acceptable, that we could put an assessment district in and require that it be hooked onto City utilities. He would defer to the Attorney, but if we were to table this, he was not sure that would not be a de facto approval of the subdivision. He didn't know that we had the authority to table this action—he thought that would be the County. We either approved or denied, but again, the responsibility for a County subdivision would lie almost entirely with the County Commission and not with the City Commission as far as septic tanks and those sorts of things. What we were looking for in our concurrent jurisdiction was from a planning standpoint of where the roads might go and what would be the impact to the City should this piece of property as a subdivision ever be annexed into the City. Mr. McDaniel said he was correct that unless the applicant requested it, tabling could only last about a month before it became an approval. They had to take an action one way or the other. The last time Mr. Zimmerle had asked for it to be tabled because he thought if he didn't, then the Commission would turn him down. As to the City's responsibilities, he didn't know whether there were people who were in the City who may be downstream from this. Certainly they had the right to consider if it was going to contaminate water that was within aquifers that the City people were drinking. As a practical matter, if the place were to get messed up with sewage, he thought they'd have a great amount of political pressure to bring them in and offer them water, or to offer them water whether or not they got incorporated. In the strict sense of legal liability, probably the fact that the septic systems and wells had to be approved by the State was something the City could fall back on and say it wasn't their call, but was the State's call. If the City found that there was a danger to water supply of some of the people within the City, then that would be a basis for turning down the subdivision. If they felt it was going to get into the water table at a point where it would affect wells that were within the City and that were used by people for potable water, that would be something they could consider. Mayor Carroll said he was not aware that situation existed. As he understood it, the reason for the tabling at the last meeting was more for the planning aspects of it as to whether or not this subdivision would interfere with the proposed routing of a road that the City may at some point in time build. That was the reason for the tabling and not necessarily the concern that was being raised tonight.

Commissioner Robertson said since we were approving this subdivision tonight with the septic tank and the well, wouldn't it be appropriate to require this particular type of septic tank which would take care of the problem? That way it would take the liabilities off of us. Mayor Carroll

said we could probably put any conditions on here we would like, but whether or not they would stand a legal challenge from the applicant or not was another issue. He knew he didn't have the expertise, and he didn't know whether any of our City staff had looked at it from the standpoint of which septic tank would be the one to be used. Again, that fell back on the State Environmental Department to make that determination, and again it fell back on the responsibility of the County government to make sure that the health, safety, and welfare of County residents was protected.

Mr. Shyne said it was mentioned that at some time the City might annex this property and require sewer. That was actually the worst nightmare. As contradictory as that sounded, it was imperative that the water from the potential of 34 times 3, which was 102 acre feet that would be sucked out of the ground, was put back into the ground through septic systems. That would be a whole new problem because if they took 100 acre feet of water upstream from some wells out of the ground and put it into a sewer and ran it elsewhere offsite, now it was a whole new problem with our wells downstream. The Arone's well was really vulnerable, and a number of others could be as well simply now from depriving it of water. If the City couldn't make a change and couldn't table it, then fine, just turn it down. Or if the owner wanted to step forward and say they would go along with an anaerobic system, he was comfortable with that. A deed restricted anaerobic septic system that was consistently maintained by the property owner was something he was comfortable with. We had a different situation here. He really believed that if the City was saying this was the County's problem, they were pushing the problem off when they should be addressing it. Mayor Carroll asked if he did not have any confidence that the County Commission would be concerned about the concerns he'd raised as adjacent property owners? Mr. Shyne believed they would be concerned; that did not relieve the City of responsibility to make a good decision.

Commissioner Cole asked why the Commission was considering this tonight if we really didn't have a lot of interest in it as a political body? Mayor Carroll said the rationale for concurrent jurisdiction in the extra-territorial zoning was more for a planning and a platting situation than anything else, so that it would allow for potential future orderly growth of a City. To his understanding, it was not an attempt to usurp the authority of the County Commission to address the appropriateness of subdivisions. Commissioner Cole said he knew the Commission was looking at annexing certain properties. If it ever occurred with that area, would they have to tie into our water system? Mayor Carroll said if they were within 150 feet of a sanitary sewer, the City could require a property owner to tie into the sewer system. He would suspect that if at some point in time that subdivision were ever annexed, the people would want to be on City water rather than well water. If it were within the City, then we could require them to hook up. Again, the Waiver of Protest would give the City certain leverage in that situation.

Mayor Carroll said he understood the concerns Mr. Shyne was raising, but he felt it appeared that we were being asked to step in the place of the County Commission and make a decision ahead of giving them the opportunity to make the decision they were responsible to make. If there was a concern, then he felt it was up to the County Commission to deny the application or to put whatever restrictions they felt needed to be put on. He didn't think it was the City's place to be burdening at this point in time, making decisions on behalf of the County Commission. Mr. Shyne said the County Commission's meeting was next Tuesday, well within the thirty days. If the Commission could table something for thirty days, they could table it until after that meeting.

Commissioner Cooper said we'd started out worrying about how we could re-route that road out there so we could tie into the expansion of a future road for the City. Now how in the hell did we get tied up with this water issue? Mayor Carroll said because it was an issue that had been raised by some of the property owners adjacent to the proposed subdivision. Commissioner

Cooper said it had nothing to do with the proposed road, and he thought we were addressing this issue on that point. Mayor Carroll said he was correct that was how this issue had started out.

Mr. Shyne said he did fully support this Commission making careful decisions of properties that may someday be annexed into the City limits. Absolutely that was critical, and he didn't want anything he said to be interpreted to mean the City should not be evaluating subdivisions and developments that were just outside the City limit line which they would eventually have to bring in. That was wise planning.

Commissioner Ledford clarified that if we approved this, the County had the ability to disapprove the subdivision and it couldn't proceed. Mayor Carroll said that was correct.

Mayor Pro-Tem Griggs said he'd listened to both sides, and he didn't see where the City had the ability to put the requirements Mr. Shyne was requesting onto the subdivision. He knew that when we talked about liability or other things, Mr. Shyne had specific remedies available to him through the legal system that could address this if he so chose to protect his rights and his property. Whatever the City Commission or the County Commission did, he still had those remedies through the court system. He was concerned about the extra-territorial jurisdiction on how we managed that. He knew Dona Ana County and Las Cruces had specific Ordinances or regulations for the governing in the extra-territorial jurisdiction, and he felt it was something we needed to develop as well. However, on this one he didn't see that we could legally support Mr. Shyne's request. As an individual he sympathized with him and could see where it would be an issue, but he just didn't know that as a body where we could do what he asked.

Commissioner Cooper said he was under the impression that what we were trying to do was to start acquiring the easements and rights-of-way to put a road in, and now we had to start worrying about extra-territorial subdivisions too? Mayor Carroll said the issue which was brought up by Mr. Shyne was different than the reason this was originally tabled. Had the road issue not come up, he suspected this would have been approved at the first meeting when it was brought up.

Commissioner Cole said he really had doubts because of the comments made this evening. He was afraid if we approved this, that we were telling the County Commission that we were in favor of it. Commissioner Cooper felt it didn't prove that we were in favor of anything, other than the fact of making sure that we had a proper route to connect the City for future expansion. If there was going to be an approval or disapproval on this subdivision, then the County had all the authority to do that, and they should take the lead on it.

Mayor Pro-Tem Griggs asked for clarification on the situation where the City Commission did not approve this subdivision, and then it went to the County Commission and they said they were going to approve it. Mayor Carroll said it wouldn't happen; it had to be concurrent approval. Mayor Pro-Tem Griggs said we would have sway over whether this thing went or not. City Planner Sharon Few said that was correct. If the City Commission did not approve it, then it did not go through. Commissioner Robertson said but if we did approve it, it was just like giving the County Commission the approval that we did approve it. Ms. Few said they had to also approve it; that was State Statute. Commissioner Robertson said right, but when we approved it, then they took it for granted that it was alright with the City, so they would do it anyway. Ms. Few said not necessarily; it had not always gone that way. Staff was now recommending approval because it did meet the criteria we had established for judging a subdivision. Additionally, although she was most sympathetic to Mr. Shyne's comments and appreciative of his research and information provided for deed restrictions to be put on, she

didn't know how we would enforce any of it. For example, if it were a restrictive covenant, we can't enforce those under State law. If a 35 foot front yard setback was put on a lot and our standard and Ordinance was 25 feet, then if somebody came in for a building permit, we had to issue it on that 25 feet. We did not issue the septic tank permits, we did not authorize the wells, and she didn't know how our putting deed restrictions on could even be enforced. She didn't know who would enforce them or the maintenance agreements for septic tanks. Under our criteria, the subdivision had met its requirements and that was why staff was recommending approval. The only issue which was initially blocking approval was the right-of-way issue which was in conflict with our Master Plan and our traffic studies.

Commissioner Cole moved not to approve (the final plat of Alamo Canyon Estates Subdivision). Seconded by Commissioner Robertson.

Commissioner Moncada said there were two different issues here. What we had in front of us was totally different than what the general public brought up. What we were approving here was the location of how our land and the roads were going to be set. But she thought what Mr. Shyne was trying to say was that he was trying to tie in the kind of tanks on what kind of wells they had to put in. Those were two different subjects. There was nothing in here stating that we were going to approve what kind of septic tanks we would allow.

Mayor Carroll clarified that the motion and second on the floor was to deny the subdivision without any reason for denial. It didn't necessarily say that we were denying it because we didn't like the septic tanks or the wells or anything; the motion was to merely deny the subdivision. Commissioner Cole said his motion was because of those two factors.

Commissioner Cole moved to withdraw his first motion, and moved to deny this because of the septic tank question that we have discussed at length this evening. Seconded by Commissioner Robertson.

The Commission recessed at 8:50 p.m., and reconvened at 9:00 p.m.

Mayor Carroll said he believed Commissioner Cole wished to withdraw his second motion, and make another motion.

Commissioner Cole moved to withdraw his second motion, and moved to deny the final plat of Alamo Canyon Estates Subdivision. Seconded by Commissioner Robertson. Commissioner Cole and Commissioner Robertson voted "aye". Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, and Commissioner Ledford voted "nay". The motion to deny failed by a vote of 2-5-0.

Commissioner Cooper moved to approve this item (the final plat of Alamo Canyon Estates Subdivision). Seconded by Commissioner Ledford.

Mayor Pro-Tem Griggs said he didn't feel comfortable in doing anything but approving this subdivision in our authority. He felt it was incumbent between the parties involved to come to a decision amongst themselves on how they could best protect their neighbors. If they felt they were doing everything in their power to do that, then that was fantastic. If there was enough concern among the neighbors that they needed to look into it further, then he would ask that they do that. Should there be contamination at some point in time by somebody, maybe the City and County would have some responsibility, but the developer sure was going to have some responsibility. So in order to protect themselves, they needed to look at that as well.

Mayor Carroll felt the discussions and concerns that had been raised here tonight should be presented to the County Commission when they went to make their decision as to whether to approve or deny. He felt a lot of concern and feeling on the part of the City Commission was that we were not totally sure we had the authority to do what was being asked of us. He felt the County Commission would be well advised to take into account the concerns that were raised here tonight, not only by Mr. Shyne, but also by some of the City Commissioners.

Mayor Carroll called for the vote on the motion. **Mayor Carroll, Mayor Pro-Tem Griggs, Commissioner Moncada, Commissioner Cooper, and Commissioner Ledford voted "aye". Commissioner Cole and Commissioner Robertson voted "nay". The motion carried by a vote of 5-2-0.**

CONTRACTS AND AGREEMENTS:

6. Amended Florida Avenue Development Contract with Sedona Development, Inc.

Recommendation: Approve the amended Contract.

Community Development Director Brian McGuire said sometime ago we were approached by Sedona Development and asked that they be allowed to amend the requirement of finishing off Florida Avenue. As he understood it, they would have to do only half of the road through the area of the subdivision they had now, and they wanted to delay that until such time as the next phases of the subdivision were built. It would also give us time to look at how we were going to carry South Florida on through. City staff met with them and all had agreed upon a time frame. This would allow the developer to complete the development of that subdivision. Before they were required to complete the pavement, they would maintain a penetration seal down to Oakmont, and they would maintain it during the time they were awaiting to put in the final pavement. It seemed like a reasonable solution to their developing multi-phased property, and that was why it was before the Commission with a recommendation for approval.

Mayor Pro-Tem Griggs said on this particular request, he had one concern regarding the issuance of Certificates of Occupancy on 70 percent of the property. He felt the Certificates of Occupancy were given to the builder once the property had the house built on it and it was ready for someone to move into, and not to the developer. He believed there was certainly potential for a big chunk or all of the lots to have been sold well before there had been any homes, or 70 percent of the homes to be built. That was the only concern he had about it. There may be another way to do it where it was 70 percent of the lot sales or something, which tied it to the developer and not necessarily to someone else. Mr. McGuire said when they looked at that, they'd tried to come up with some sort of equitable measure. They felt when they got to 70 percent of people living there, that would be the time they would want the road in. Mr. McCourt said it was that or five years, whichever came first. Mr. McGuire said homes were selling quite well right now; that might change and they felt this way would protect both the builder and the City. It was the one thing they could think of which seemed equitable. Mayor Pro-Tem Griggs said his only concern with it was that it was not a direct tie to the developer; it was a tie to somebody else and to some other measure.

Commissioner Robertson asked if this job had gone out for RFP whenever we awarded it to the contractor? Mr. McCourt said this particular one was a subdivision development, and as part of that they had a requirement to develop a portion of the future South Florida. Commissioner Robertson said he was concerned that without expansion for the street, would it have to go back out for RFP? Mr. McGuire said no; it was limited to the activities of the Sedona Development contract.

Commissioner Cooper moved that we approve the Sedona Development as stated (Amended Florida Avenue Development Contract with Sedona Development). Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0.

7. Amendment to the Employment Agreement with City Manager Pat McCourt.

Recommendation: Approve the amendments and direct the City Attorney to prepare the Agreement.

Mayor Carroll said this item was on the agenda because of the Contract with the City Manager which required an annual evaluation of the City Manager's performance and for the City Commission to take any action which they felt appropriate in regard to his Contract relative to his evaluation.

Mayor Pro-Tem Griggs said after much soul searching and head scratching amongst the Commission, the decision was to offer to extend the Contract and to grant the City Manager a 6.5 percent salary increase.

Mayor Pro-Tem Griggs moved to extend the term of the City Manager's Contract until January 19, 2008, and increase his base salary by 6.5 percent effective the first pay period in July 2004. Seconded by Commissioner Cooper. All voted "aye". The motion carried by a vote of 7-0-0.

Mayor Carroll said obviously the Commission appreciated Mr. McCourt's performance and the work he'd done on behalf of the City and the citizens of Alamogordo. Mr. McCourt thanked the Commission for their vote of confidence. He would certainly continue to do his best. He also wanted to thank City staff because without them he couldn't do his job.

ORDINANCES AND RESOLUTIONS:

10. Ordinance No. 1212 authorizing the issuance and sale of the Gross Receipts Tax Refunding and Improvement Revenue Bonds, Series 2004, in an aggregate principal amount of \$5,355,000 for the purposes of defraying the cost of (1) flood control projects, public buildings, open space, public parks and recreational facilities, and (2) refinancing the outstanding Gross Receipts Tax Revenue Bonds, Series 1996.

Recommendation: Approve the Ordinance for first publication.

Mayor Carroll said the Commission had received a memo which indicated a couple of corrections to the information which was previously provided in the packets. One of the corrections was to delete the references to street maintenance equipment projects; that was a carryover from a previous bond issue.

Commissioner Cole moved for approval (of approve Ordinance No. 1212 for first publication). Seconded by Mayor Pro-Tem Griggs.

Commissioner Robertson asked if this was approving the actual bond tonight? Mayor Carroll said no; it was only approving for first publication. There was a time schedule which had been provided earlier that the final approval would be the first meeting in July.

Mayor Carroll said he was supportive of refinancing this issue and in raising additional capital. His concern was that he would have been much more comfortable had we assigned some dollar figures to some of the projects that we were considering rather than raising a sum of money and then hopefully figuring out what to do with it. Having said that, he felt the market was at an opportune time to do this and it did give us money to continue with our flood control project and some other City projects.

Commissioner Robertson asked if the night that they voted on this in final was the night they would come up with the funding for the different projects? Mayor Carroll said no; that would be done at some other time. Those specific projects or amounts would not be tied to this refunding.

Commissioner Cooper said one thing that concerned him was extending these bonds out that far. At the \$3.5 million as was suggested it would actually leave some real room for the next Commission in future years; but for all of it he felt we would be tying their hands. Mayor Carroll said this refunded bonds, gave us financing for flood control and gave us financing for some other projects that the Commission wished to see done. Mayor Pro-Tem Griggs said also that this new bond was a 15-year bond. We did talk about extending this longer so we would have more money. We were able to maintain a 15-year term on the bond and still get us the amount of money we had talked about.

Mayor Carroll said that tonight it took merely a simple majority to pass this for first publication, but for final adoption and the actual issuance of the bond, it would take a supermajority of the Commission.

Mayor Carroll called for the vote on the motion. **All voted “aye”. The motion carried by a vote of 7-0-0.**

12. Resolution No. 2004-23 directing staff regarding a policy to restrict driveway access onto roadways identified in the Comprehensive Plan/Traffic Study as a current or future collector, arterial or state highway.

Recommendation: Approve the Resolution.

Mayor Carroll said in essence we were passing a Resolution to instruct staff to prepare an Ordinance for our consideration. The reason we were taking this convoluted route to get to something was to offset some of the complaints we'd had in the past that “you didn't tell us you were doing this”. So by bringing it up tonight and passing a Resolution directing staff to draft an Ordinance, it should put the building community on notice that we were in fact proposing to prepare an Ordinance which would restrict driveway access onto certain arterial and high traffic streets. So that was the purpose of doing it the way we were.

Mr. Michael Shyne asked if this dealt with just residential, or with all property uses? Mr. McCourt said that was part of the reason we were getting this discussion out. Presumably it would deal with all types of uses. Mr. Shyne said it meant that a shopping center that naturally had to be on an arterial wouldn't have any access. Mr. McCourt said no; what it meant was that it wouldn't have unlimited access.

Mayor Carroll said a lot of the concern on arterials had been on backing out. Mr. Shyne said right, for the homes on Scenic Drive issue. He absolutely agreed. Mayor Carroll said that was why the discussion was being started as to what kind of access, how limited did they want to make the access, and how. That was why we were taking this long, drawn out process to do

it—so that everyone who may be interested in it had plenty of time to make their inputs known. Mr. Shyne said to please recognize that the motivation of this was the examples like Scenic Drive homes where they had to back right out onto Scenic and really caused traffic problems. That was a residential issue. He urged the Commission to please be very careful what they did in restricting commercial properties that by definition needed to be on an arterial street and needed to obviously have access to that traffic. Second, he also asked that a specific exemption be put in there for existing lots that hadn't been developed. There were a lot of lots in this town, residential and commercial, which had not been developed and those lot owners could not go back and replat the subdivision so they had access from some other direction—it didn't work that way. So that really needed to be a stated exemption so that as staff changed, the property owners didn't have to re-prove the issue that their lot existed before this Ordinance.

Mr. McCourt said this type of discussion was exactly what we intended to have happen. Ms. Few said this was just a buy-in that we had a Traffic Plan and a Comprehensive Study which had been designed with streets that carried high volume, higher speed traffic and that it was going to be protected so that we avoid issues of congestion and backing onto streets. If the Commission bought into this Resolution tonight, then staff would be starting a process, which they'd already done informally, talking with business leaders, developers, and home builders in the community. There were lots we recognized that had no other access, so how did we minimize the impact of those lots that had only access onto arterials and collectors. We would go on notice for new development that we were going to have to be putting in frontage roads or double-fronted lots. For commercial maybe we would be talking about shared driveways, acceleration and deceleration lanes. The possibilities were endless, but getting more people in on the initial drafting would allow for a better Ordinance, people thinking outside the box, and people bringing in other experiences from other communities. That was all we were trying to do tonight.

Commissioner Robertson asked if those existing lots could be grandfathered in? Ms. Few said this wasn't an Ordinance, but was simply a Resolution telling the City Attorney and she to get together and get it done and work with the community. They recognized that these were issues we'd already defined, but anything else they would love to put in so they could get it in the Ordinance.

Mr. McDaniel said to answer Commissioner Robertson's question, if they had an existing lot that only had access to a particular arterial, they couldn't cut it off completely unless they condemned the lot. In other words, they would render the lot valueless if they cut it off completely, so the City would end up buying the lot. So staff wouldn't very likely be suggesting that on anything unless it was a really terrible situation. But what they may be doing was requiring an existing lot to have a loop drive instead of a back-out drive. Ms. Few said or perhaps shared driveways between two lots that would only have access onto an arterial. Commissioner Robertson asked if that would require another replat? Ms. Few said no.

Mayor Pro-Tem Griggs felt Alamogordo had been behind the curve on this kind of stuff. Other communities had made very specific requirements that arterials be minimally accessed. If they had two or three businesses on a street, often times there was only access on one end or the other, just to allow the traffic flow to be less impacted. It was a safety issue and it was important that we continue to pursue stuff like this. He felt we'd done a good job on Scenic with Cottonwood Subdivision, and with all new subdivisions this would just let them know that they didn't need to be fronting the arterials and it let them plan accordingly.

Mayor Pro-Tem Griggs moved that we approve Resolution No. 2004-23 and direct staff to come up with a policy to restrict driveway access onto roadways identified in the

Comprehensive Plan/Traffic Study as a current or future collector, arterial or state highway. Seconded by Commissioner Cooper.

Commissioner Robertson said before this was final, would it come back for approval? Mayor Carroll said yes; it would come back at some point in the form of an Ordinance and then we'd go through the whole Ordinance process.

Mayor Carroll called for the vote on the motion. **All voted "aye". The motion carried by a roll call vote of 7-0-0.**

13. Resolution No. 2004-30 removing uncollectible and unsecured utility and other miscellaneous accounts from the City's accounts receivable.

Recommendation: Approve the Resolution.

Mayor Carroll said in the material provided on some of the things to be considered to be written off, there was a correction item that some of the miscellaneous accounts receivable were actually at the Otero-Lincoln County Landfill. So that particular write-off would have to go before the Joint Landfill Authority to be written off. So the Resolution may need to be slightly re-worded, and what we need to consider tonight is the Resolution for removing uncollectible and unsecured utility billing accounts from the City of Alamogordo accounts receivable. So take out the other miscellaneous accounts.

Mr. McCourt asked for clarification because we may have some other miscellaneous accounts other than utility billing. Finance Director LeeAnn Nichols said the last one listed was for weed abatement. It could be re-worded to say for the other accounts related strictly to the City of Alamogordo accounts receivable.

Commissioner Robertson asked what the Darla Southwest, Inc. listing was? Ms. Nichols said it was a landfill account; she believed they were from El Paso. Mr. McCourt explained that they came up and used our landfill. Mayor Carroll said since the City merely managed the landfill operation, we did not have the authority to write off any uncollectibles for that Authority.

Mayor Carroll clarified that the Resolution to be considered was to remove uncollectible and unsecured utility billing and miscellaneous accounts owed to the City of Alamogordo.

Commissioner Cole moved to approve (Resolution No. 2004-30 to remove uncollectible and unsecured utility billing and miscellaneous accounts owed to the City of Alamogordo). Seconded by Commissioner Robertson. All voted "aye". The motion carried by a roll call vote of 7-0-0.

15. Resolution No. 2004-34 approving and accepting the New Mexico Department of Transportation (NMDOT) Third Supplemental Cooperative Severance Tax Agreement and Certification Project No. ST-7635(214) – South Florida Avenue Widening and Extension Project.

Recommendation: Approve the Resolution.

Commissioner Cole said he supported the Resolution, but wanted to be updated on the plans. Mr. McCourt said this was one of our Grants from the State. Mr. McGuire said this was a Grant we'd received through our legislature this year. We hoped to widen South Florida from Panorama south past the fire station. We were designing it as far as we could go, and believed

we'd be able to get it just south of the Armory with this amount of money. It would move it another quarter of a mile to 3/8ths of a mile down South Florida. Commissioner Cole asked the number of lanes? Mr. McGuire said it would be two lanes with a shoulder; it would be the same width as South Florida currently was when you got to Panorama. Right now when you got past Panorama, it necked down a little bit. Two years ago we built the box culvert across there in preparation for this to go on down. This would just complete the paving on down as far south as we could get it. Our estimate was that it would get it into the vicinity of the Armory.

Commissioner Cole moved to approve Resolution No. 2004-34. Seconded by Mayor Pro-Tem Griggs. All voted "aye". The motion carried by a roll call vote of 7-0-0.

OTHER BUSINESS:

16. Discussion regarding the Desert Lakes Railroad Underpass.

Recommendation: Do not proceed at this time.

Mr. McCourt said this was a particular project to look at how we could get the underpass under the Union Pacific tracks, what we called Desert Lakes Road, connected back to Highway 54. The consulting contract was used to get us a ball park price, and then also to get a price to really go in and do a detailed study on how we would do it and how we would set it up. A detailed study was what we would call a specific plan as it related to our Alamogordo Traffic Plan. We had general plans in our Traffic Plan, and then we developed specific plans. The Desert Lakes Road connection from Hamilton to U.S. 54 was part of our Alamogordo Traffic Plan; it was an element within there. The reason he couldn't recommend proceeding at this time was because there was no money to recommend how we could fund it. Perhaps what would be in order was as we closed out our fiscal year, were a couple of items the Commission had talked about that they would like to see us develop. One example was the specific plan for the Scenic Extension. He'd had discussions on a position within the City which he felt could be beneficial, and he felt this would fit into that same category. As we got to year end and could see how much we might have left in funds available, that would be the appropriate time to perhaps approve some specific capital projects such as this if it was the Commission's desire to then move forward with developing the specific plan. Staff's estimate at this time was that the specific plan for doing the engineering and testing was \$18,500. Mr. McGuire said that was correct, and a majority of that was dealing with the drainage issues out there. Before an engineering company could come in and design a fairly straightforward underpass, we would have to determine what we were going to do with the water that traveled through that area. After the design was done with the \$18,500, then staff could come back to the Commission with, and put on the ICIP, an accurate amount of what it would take to construct that. Right now we had the ballpark estimate of half a million dollars to construct it. We would be spending the \$18,500 to get that to be a more firm figure for us, and that was why we'd asked an engineering firm to do that for us.

Mayor Carroll said unless the Commission felt that the half million dollars or more was a good investment, then he didn't know that it made a lot of sense to proceed with hiring an engineer to tell us that it was going to cost more than a half million. The ball park estimates normally didn't go down. Mr. McGuire agreed.

Mayor Pro-Tem Griggs said this was something he'd asked that we pursue to see what we could do, because he felt it was still an important access point for the people that lived in the Golf Course area. He'd like to see us proceed ahead in some manner to where we could find out what it would take, design for it, and then plan it out on our ICIP to have this as another

access to the highway. He didn't know how the Commission felt, but he felt this was important enough to the residents down there that we needed to at least make a provision to plan for it.

Mayor Carroll said the City Manager's suggestion at this point was that we had the information and we just postpone doing anything until we see. Mayor Pro-Tem Griggs said he was in agreement.

Mayor Carroll stated that this item was mainly for information, and there was no action required this evening.

18. Change Order No. 1 for Public Works Bid No. 2004-003, South Florida Avenue Improvements – Re-Bid.

Recommendation: Approve the Change Order.

Mayor Carroll said this was another instance where we had bid a project, and then the Commission was asked to approve a very substantial Change Order, which was basically a 71 percent increase over the initial project that we let. He did notice that the charges for the quantities were the same as in the original bid, so he didn't know that we were necessarily paying anymore than we would have had we put this whole thing out for bid at once. His concern was that we'd taken the low bid on a specific bid requirement, and we didn't necessarily know what other bidders may have bid had they known that the scope of the project was much larger than what we originally went out for. Mr. McGuire said this was a market driven issue. When staff opened the bids, the Star Paving bid was in the neighborhood of \$30,000 or \$40,000 below the rest of it, which left us with a substantial amount of money in that it allowed us to go back and redesign, and that was what we did. Staff had not approached any of the other bidders about whether they would have changed their bid for a larger project or not; they just were substantially larger than that. We'd competed basically on the unit prices and so we had done our competition and felt we'd be remiss if we didn't try to bring this decision to the Commission.

Mr. McCourt said this intersection had been a long project. We went out to bid on it and it came in too high. We then went out to see if we could do a negotiated arrangement, and that did not succeed. We have reworked the project and based on what other bids were occurring in the market, we sized it where we thought we would be able to get the work done. Low and behold we got bargain basement bids from one of our bidders, which again allowed us to have more funds available than we thought. He saw it as a door of opportunity to get some more work done which needed to be done. This was an extremely busy intersection. He understood the concern and as he stated to one of the staff today, this was not a question of legality but was a question of politics and how it would be viewed out in the community. Legally we could do this, but was it the right thing to do.

Mayor Carroll said obviously the prices were beneficial to the City, but when we did these things it did open us up to criticism from other elements in the construction community. We ought to hopefully be able to plan these projects better and not be into this where we are making large scale Change Orders. Mr. McGuire felt this one had surprised staff dramatically. We had scaled it back down to where we thought we would use the money we had in, but the marketplace gave us this better price so we felt we should come back to the Commission and say that we could get a lot more work done for the money.

Mayor Carroll said making the comments he had, he now felt we needed to accept the Change Order.

Commissioner Ledford said he typically looked at a Change Order as one that changed something that was bid and not a whole new project. He appreciated taxpayer dollars being used for a bargain purchase, but how did we know somebody else couldn't give a bargain purchase with the total project. So they were denied that. We would get criticism probably because this was a high profile intersection. We'd done some different things on it last time but it had been tabled or stopped. Legally we could do it, but he was a little surprised at that because of the significance of the Change Order relating to what the project was. It just didn't seem fair to the bid process when you could do this, because where did it stop? What about the next project? That would be the criticism we were going to get from other bidders. If we approved it tonight it was because of dollars and the comfortable feeling that it was priced right, but was that fair to free enterprise? He didn't know, and he had a problem with how it was done. Staff hadn't talked to any other contractors about it, and he assumed it was because they might be scared what the contractors would say. Mr. McCourt said actually we felt pretty good that we had this contractor step up and give us these prices. Commissioner Ledford said he understood that, but when you took original contract plus the Change Order, wasn't it now more than what the next lowest bid was on the original RFP? Mr. McGuire said he'd have to look at the record, but he believed this Change Order would put it above what the next highest bid was. Commissioner Ledford said that was his concern. Mr. McGuire said one of the reasons they'd chose this option rather than going back out and re-bidding the project was the dramatic increase. Mr. McCourt clarified that we were not re-bidding the project.

Commissioner Robertson said he had a problem with that also that it was not fair to the other bidders. This bid was accepted because it was right, but now they had a Change Order before they ever even started the project. So he felt this needed to go back out for RFP if we were going to do the project. Mayor Carroll said this was the quandary we found ourselves in when these things happened.

Commissioner Robertson said he had another problem on this thing also. Looking at the map, he knew the intersection and it didn't look to him like we were really changing that much by doing this except for cutting out some driveways from the Civic Center. We already had a turn lane, a left turn lane going out of the light, and a right turn lane going down Florida. What were we actually correcting besides putting down some new pavement? Mayor Carroll said we were correcting some slopes. Mr. McCourt said a major problem with this intersection was that the slope as you came off of Florida and turned east onto First Street was wrong. The base bid was to address that immediate area right there, to correct the road design which was not appropriate. The change lengthened the turn lane to get in there. Currently the traffic that was backed up was past where you could move in to turn east on First Street. So this would lengthen the turn lane to allow better traffic flow to move in and turn east and not be backed up when that light was red. There was repaving that was south from there, so this would tie into that repaving which was done about two years ago. It also would close the one exit point from the Civic Center because of the congestion, and move it further to the south on Florida.

Mr. McGuire said the other part of this was that this money was a Grant, and if we didn't spend the money, then we would have to send it back to the State. It was a 100 percent Grant with no match. If we didn't approve this Change Order and we went back to the original award to start paving, then the money we had sitting on the table went back to the State of New Mexico. It had to be used for this specific area. We could go out to bid for the second portion of it, but we knew that construction materials had gone up considerably within the last two months. Commissioner Ledford said his office was located in that general area and it was pretty dang obvious this was important, but he was having a hard time with the political part of it. Mayor

Carroll said we faced this and that was the point he was trying to make. We just needed to make every effort not to find ourselves in this position.

Commissioner Robertson asked if there was a maximum amount on the Grant? Mayor Carroll said there was no maximum, just a dollar amount they gave us, period. Mr. McGuire said he believed the Grant was in the neighborhood of \$120,000. Commissioner Robertson clarified that we had more than enough to cover the whole thing.

Commissioner Cooper remembered a few years ago there was a discussion to ask First National Bank to move their motor bank off of the corner in order to straighten Florida Avenue out. Mayor Carroll said a number of years ago we had addressed changing the route on Florida. When that was looked at, the cost of acquiring the property on the north side of First Street was a real limiting factor. We would have had to acquire two or three pieces of commercial property to be able to take that over. That was why it had never really been pursued.

Mr. McCourt said in the course of doing this project, we had been working with First National Bank to get the sidewalk constructed in front of their building on First Street and on Florida Avenue. They had agreed to do it at their cost. During that discussion, we had some other discussions on closing driveway entrances. The question of them potentially moving from this site had come up. We were at an extremely preliminary stage, but we did have some discussions in line with the possibility of seeing if it was feasible to acquire the necessary properties to make Florida Avenue a 90 degree crossing instead of the offset it was now. Commissioner Robertson said Pete Cook had told him they were going to tear down that building and put up a new one on that same corner.

Mayor Pro-Tem Griggs moved to approve (Change Order No. 1 for Public Works Bid No. 2004-003, South Florida Avenue Improvements – Re-Bid). Seconded by Commissioner Cooper. All voted “aye”. The motion carried by a vote of 7-0-0.

20. Appointments to Boards and Committees.

Airport Advisory Board: One vacancy. Mayor Carroll appointed Ms. Gisela Coleman to fill the vacancy.

Alamogordo Disability Council: One vacancy.

Senior Volunteer Programs Advisory Council: One vacancy.

The remaining vacancies were rescheduled.

UNSCHEDULED COMMUNICATIONS:

A. Comments by Mr. Michael Shyne.

Mr. Shyne said his mother owned a commercial building at 1401-1407 Indian Wells, and he'd noticed that she'd been paying garbage fees for a while. At the same time she paid Southwest Disposal directly for dumpsters. He believed the City was accidentally billing her, so he'd called the Water Department. He learned they were billing her for garbage because they had this four-unit commercial building down as a five-unit residential building, and they'd told him the City Commission had to approve a refund. He'd then called Southwest Disposal and learned that his mother had been paying them on a contract from May 2000. So he was asking if the City could

refund the \$51 plus sales tax she had been paying per month for garbage since May 2000 when she'd had her most recent contract with Southwest Disposal. She'd in fact had a contract with Southwest Disposal for a long time, but that was the only one they had a record of. It amounted to approximately \$600 per year for four years.

Mr. McCourt recommended Mr. Shyne meet with staff so they could prepare a report and evaluation on it. Then if it needed to come to the Commission, they would bring it back. If it was possible to handle it through our normal systems, then it could be done that way. He directed Mr. Shyne to meet with Ms. Nichols to get it underway.

B. Comments by City Manager.

Mr. McCourt said he'd attended his City Management conference in Albuquerque last week, and he'd brought back some good information. We would be held harmless not only on the food portion of our gross receipts taxes, but also on the medical services.

Mr. McCourt said he'd also found out that we were extremely likely to be awarded a \$6.5 million loan at 2 percent for our reverse osmosis project through the New Mexico Finance Authority. Staff had applied for it and it was going through the State review process. He would be attending a meeting next week with Mr. McGuire to meet with that Board and answer any questions they may have concerning that. We had looked at the reverse osmosis system and asked what we would need to build it regardless of whether or not we got awarded a penny.

Mr. McCourt said the Commission had received the water report. The good news was that we were in better shape than a year ago. Bonito Lake was starting to fall substantially and was now approximately three feet below the spillway. On June 8th it was about a foot below the spillway. There was a small fire up near the lake, but it appeared to have been squashed. Staff had received a contact from the Forest Service asking that if fires originated up in that area, would we allow them to use water from Bonito Lake by their doing drop downs with their helicopters and buckets. He'd checked with the State Engineer, and they'd given written authority to allow that use. It wouldn't be counted against our water allocation, so he had verbally given the Forest Service approval. We would rather the lake levels not fall at all, but this was a storage lake and so it was normal for the levels to drop during the summer. This happened last year also, and it was a normal type of occurrence especially given the drought situation we were in.

Mr. McCourt said we'd had a very major problem which had occurred in the past week, and he'd brought some sewer pipe in to show the Commission. This was a project we'd had in our ICIP where we were projecting the need to replace a section of sewer line that went on the west side of the Union Pacific tracks from Sixteenth Street down to Fifth Street. It was an old concrete line, and literally the top half of it had rotted away. There was a blockage which had occurred last week, and it was a major sewer line that served approximately 25 to 30 percent of our community. It served essentially all residents north of Sixteenth Street. City crews had responded immediately and temporarily kept the line open. The blockage occurred underneath the Space Museum's storage building. City crews were able to get it open and flowing. The ICIP actually called for us to upgrade this whole area westward all the way out to the Relief Route, and then turn south at the Relief Route. It would allow us to pick up additional areas of the City. Ideally that was what we would do. Basically we would have to replace the line under the tracks and from Sixteenth on out.

Commissioner Robertson asked an approximate cost. Mr. McCourt said they were probably looking at over a half million for a quick fix, and probably closer to a million to do the

replacement. Mr. Miramontes said part of the problem we had was that the pipeline was relatively large, about a 21 inch line, and it served a very large area. It was concrete and was at least 50 years old. It did cross the railroad tracks which would involve a boring and would make it even more expensive. Community Development had been working on some alternatives, and they had some cost estimates staff would look at tomorrow.

Commissioner Robertson asked if water was still flowing through it? Mr. Miramontes said yes; we had no choice. It was taking care of everything that we were producing right now, but it had caved in at places.

Commissioner Ledford said if we spent this million dollars and then did the ICIP stuff later on, would we still be able to use the line later on? Mr. McCourt said yes, we could still use this line, but it wouldn't preclude the need for us to do the other line. Mr. Miramontes said staff was exploring what would fit best to accommodate the ICIP while taking care of the current problem. Mr. McCourt said staff did not have the final solution yet; we had general concepts of ways to address it, but no final answer to bring to the Commission yet. They did need to be aware that this was an extremely major problem which we would have to address quickly. Commissioner Robertson asked how we knew that we could stop at Tenth Street? What if we didn't know that we needed to go further on up than that? Mr. Miramontes said we know where the pipe is. The section which needed to be replaced ran from Fifth Street to just north of the Zoo where we had the exposure. Mr. McCourt said we had previously fixed the line south of Fifth Street and north of Sixteenth Street. Mr. Miramontes said other sections of that same large pipe that needed to be fixed were primarily from Florida Avenue going up to the Senior Center.

Commissioner Robertson asked if it was something the City crews could handle? Mr. Miramontes said it would have to be contracted out because of the scope. For example, we would have to bore across the railroad tracks which took specialized equipment. Mr. McGuire said we didn't know whether the casing which went under the railroad tracks was in the same condition. We were concerned about derailments because of softening of the whole railroad base.

Commissioner Ledford asked if this was so bad that it could erupt flow? Mr. Miramontes said yes. Commissioner Ledford asked the time frame to get it fixed. Mr. McGuire said his engineering people stated that by 1:30 p.m. tomorrow they would have a series of options they'd worked out available for Mr. McCourt to consider, and tentative prices. Mr. Miramontes said staff envisioned that the City Manager would declare an emergency and come to the Commission for authorization and bypass the bidding process. It was that serious. Mr. McCourt anticipated examining some alternatives and then starting to talk to some contractors and get prices. Commissioner Ledford asked how long it was anticipated to get some emergency help on this? Mr. McCourt said staff had been on that for the past two days. At this point one possibility was through the New Mexico Finance Authority, which would be a loan. Mr. Miramontes said there were very serious consequences to this if we had a serious blockage. If we could not stop the sewage, it would subject us to fines from the State, a derailment, etc.

Mayor Pro-Tem Griggs asked the City's cost on the ICIP to do the new project? Mayor Carroll thought the total was about \$2 to \$3 million for the entire thing to be done. This information tonight was only for information purposes--we didn't have time to sit and discuss this project, because it was not optional. Mr. McCourt said staff would move forward as quickly as possible, and any solutions would be shared with the Commission. Staff was going to move forward to secure the safety, health, and welfare of the community as quickly as possible. Mr. Miramontes felt it was important to reiterate that staff would be bypassing the formal, sealed bidding process. That did not preclude us from talking to the main utility contractors and getting the

best possible price. It would be more like an open bid because of the time constraints and the seriousness of it.

Mr. McCourt had passed out articles to the Commission concerning the draught, and that the one we were facing was worse than the dustbowl draught. The articles did state that it was over the 500 year draught range and they thought it was going to end.

Mr. McCourt said in the Commission office they would find a sketch of the fountain which had been discussed for the Zoo. That was all staff had received to date, and they had not given approval. The contractor was sent a letter that we needed to approve their design before they started work. Yesterday they had showed up to work, and we told them not until they presented their plans. He had some concerns on the particular plan that had been submitted, and he encouraged the Commission to submit any concerns they may have as well.

Mr. McCourt had a letter from the Special Olympics of New Mexico which had been sent to Chief Trujillo complimenting Sergeant Doyle Syling for his work on the Special Olympics and the law enforcement torch run. Essentially it stated what a tremendous job Sgt. Syling had done and how he had inspired people and made the project happen through his efforts.

Mayor Carroll thanked the staff and Commission for the cards, flowers, and fruit basket which had been sent to his wife following her recent surgery. She was on the mend and they both appreciated the concern of everyone.

Commissioner Cooper moved to adjourn. Seconded by Commissioner Robertson. All voted "aye". The motion carried by a vote of 7-0-0. The meeting was adjourned at 10:20 p.m.

/s/Donald E. Carroll

Mayor Donald E. Carroll

ATTEST:

/s/Angie Rahn-Broyles

City Clerk Angie J. Rahn-Broyles
(SEAL)

(Prepared by Teresa Y. Gutierrez)

Approved at the City Commission Regular Meeting of July 13, 2004